



**BROTHER OF S-21 SURVIVOR WAS FORCED TO KILL HIS OWN FATHER
BEFORE BEING KILLED HIMSELF BECAUSE HE HESITATED
TO FOLLOW THE ORDER**

July 9, 2009

By Laura MacDonald, Member of the New York Bar and Consultant to the Center for International Human Rights, Northwestern University School of Law

Today, the Trial Chamber heard the testimony of two female civil parties both of whom claim they were detained at Tuol Sleng prison (S-21) in Phnom Penh before being transferred to Prey Sar re-education camp (S-24). For almost all of the Democratic Kampuchea period, both of these facilities were under the control of Kaing Guek Eav (alias Duch).

Chim Meth's Mug Shot Is Displayed at Tuol Sleng Genocide Museum, But Where Did It Come From?

After fielding hours of questions from the judges yesterday, 51 year old civil party Chim Meth returned to the stand this morning. Before she began her testimony, the prosecution sought to formally put before the Chamber photographs Chim brought with her to court yesterday. After about 40 minutes of discussing the photographs and passing them around the courtroom, the Chamber accepted Chim's mug shot and a picture of two women posing in front of the mug shot while on display at the Tuol Sleng Genocide Museum.

This seemingly minor procedural matter was drawn out because it raised an important substantive issue. Chim's lawyers and the defense disagreed about where the mug shot was taken and whether that fact had been established. The defense argued that Chim testified the photograph was taken at S-24. Chim's lawyers argued the fact was not established. Chim's lawyers recalled that Duch said the photograph was from S-24, whereas Chim testified it was from the military division where she worked *before* being sent to S-21 and S-24. It should be noted that the official transcript of yesterday's proceedings is not yet available. All the parties, therefore, were working off of unofficial notes.

According to my notes from yesterday, the defense was correct. Yesterday, Chim stated the photograph was taken in 1977 or 1978 when she was 19 years old at S-24 Unit 17. After she made this statement, President Nil Nonn commented that she was not very skinny in the photograph, implying it was not taken at S-24 where she claimed to be starving.

Given all the confusion, Judge Cartwright asked Duch to clarify how he knew the photograph was from S-24, since he had stated it so confidently yesterday. Adding to the confusion, Duch claimed that yesterday he simply agreed with Chim's testimony because she made clear the photograph was from S-24. He said he had not made any observations of his own. According to my notes from yesterday, Duch stated clearly that the photograph was from S-24. He did not qualify the statement in any way. Later today, the prosecution asked Duch about his impression of the mug shot given that Chim was not displaying a prisoner identification number. Appearing to revert to his original position, Duch stated clearly that the photograph was taken at S-24, but developed at S-21. He also confirmed Chim's biography was produced by Comrade Hoy at S-24, although it was kept at S-21.

It appears that Chim was confused yesterday and misidentified the time and place where the photograph was taken. I do not understand why her lawyers did not just say so. Today, she maintained the photograph was taken at her military division, before she was arrested, at the same time her biography was prepared. The Chamber will have to draw its own conclusion given Duch maintained the photograph and biography were from S-24. Since Chim was blindfolded for much of her detention and cannot provide details, the photograph and the biography are the only known evidence that could link her to S-21.

Developing Chim Meth's Story

While Chim provided a detailed account of her experiences during the Democratic Kampuchea period yesterday under examination from the Chamber, the parties today failed to develop her story much further.

In brief, Chim was conscripted into a female Khmer Rouge military unit in which she served until her arrest on November 10, 1977. She was sent to a detention facility that she believes was S-21. For 15 days, she shared a cell with two women she knew and saw no other prisoners. She was interrogated, tortured, and then transferred to what she believes was S-24. She was forced to work under miserable conditions in the rice fields before being transferred to another unit to grow vegetables. She fled that location when the Vietnamese arrived and was eventually taken in by an elderly woman.

Given that the four civil party groups generally have only 40 minutes to allocate among themselves, they have been giving priority to the legal team that represents the testifying civil party. Chim is represented by civil party group 3 and that group used the entire 40 minutes today. This was a first. While it makes good sense to give the floor to the group that has the greatest familiarity with the civil party and the relevant facts, today the result was very disappointing.

One lawyer spent nearly ten minutes on background questions aimed to establish one simple point – that Chim did not enter the Khmer Rouge army willfully. In a trial in which time is not an issue, I can understand the value of asking background questions aimed at building sympathy for a victim and seeking to reveal an answers naturally and

dramatically. However, time is precious in this trial, so questions should focus on building the case. It is not at all certain Chim was detained at S-21, and yet much time was spent establishing that years before her arrest, Chim lived with her impoverished grandparents. The President scolded the lawyer a couple times instructing her to ask questions related to the relevant facts regarding detention. The second lawyer for civil party group 3 then proceeded to ask Duch four unrelated questions rolled into one. The President scolded the lawyer, asking him if he would be able to respond to so many questions at once. Duch answered a few of the questions, but could not remember them all. Duch, too, scolded the lawyer, instructing that only one question should be asked at a time. Predictably, civil party group 3 requested that more time be allowed for their colleagues and the President denied the request without hesitation.

While there were glaring inconsistencies between the written statements submitted to the court and the oral testimonies provided by Ly Hor, Lay Chan, and Phork Khan who testified earlier this week, Chim wrote her own statement out by hand and the inconsistencies between her statement and testimony were relatively minor. The application statements of the other civil parties were prepared by non-profit organizations and apparently not reviewed thoroughly by the civil parties themselves. The defense's questions for Chim focused on highlighting these minor inconsistencies as well as the lack of evidence she was detained at S-21.

Former Medic Lost Her Entire Immediate Family at S-21

48 year old civil party Nam Mon testified today on her own behalf and on behalf of her four brothers, two parents, and two uncles who allegedly perished at S-21.

Before she entered the courtroom to testify, her lawyer Silke Studzinsky stood to inform the Chamber that new information had recently come to light about Nam and she would consequently testify to a much broader story than the one detailed in her civil party application. Studzinsky cited examples of issues Nam would discuss that apparently the Chamber was hearing for the first time. Studzinsky also informed the Chamber that Nam is very fragile and would likely need breaks. She asked that the judges refrain from instructing Nam to console herself, and suggested they take her emotions into account as "non-verbal evidence."

While Judge Cartwright always remains cool and calm, it was clear she was not at all pleased with these remarks. Judge Cartwright pressed Studzinsky on how many occasions and on which dates she had met with Nam. After receiving an answer of two times – once long ago and once about ten days ago, Judge Cartwright concluded that Studzinsky had not fully investigated Nam before suggesting to the Chamber that Nam testify. On Monday, after a difficult day, Judge Cartwright made similar comments to Alain Werner of civil party group 1, stating that the Chamber expected better preparation of civil parties in the future. Responding to Studzinsky's second point about how the judges should treat witnesses, Judge Cartwright explained that the judges had already assessed witnesses' fitness to testify. Further, Judge Cartwright told Studzinsky that the Chamber is composed of "experienced judges" who do not require such advice.

Nam's parents joined the resistance movement early on, so after Phnom Penh was evacuated, her family returned to the city where her father managed logistics in some capacity for the Khmer Rouge. Her two eldest brothers lived at S-21 where they worked as guards. In mid-1975, when she was only 15 years old, Nam started working as a medic at S-21. She lived in a building across the street from S-21's main gate with two other female medics.

One day in 1977, by chance, Nam saw her father in handcuffs being walked by guards from a truck into the S-21 compound where he was stripped. He was detained in a cell with other Khmer Rouge cadre. Nam visited him there once and could tell he had been severely tortured. He explained the need for Nam to distance herself from him. About six months later, one of the other medics told Nam that Nam's oldest brother had carried out an order to kill her father. Three days later, Nam's brother was killed without first being detained. He had been labeled a traitor after hesitating to shoot his father. Nam's other brother serving as a guard as well as her mother and little brother were arrested shortly thereafter. Nam never saw them again.

About a month later, Nam was arrested as well. She was detained at S-21 for about three months in an individual cell in the same building where she had previously aided prisoners. For the first two weeks, she was interrogated and tortured two or three times each day. She maintained she was the daughter of her godparents and used their names rather than the names of her real parents. One day, in the late afternoon, she was handcuffed and put on a truck with five or six other prisoners and transferred to S-24. She was interrogated and tortured at S-24 as well. Under the watch of armed guards, she was forced to dig large pits for the bodies of dead children. At night, she was locked in a room and her feet were shackled. She worked there for about three months before being transferred to another prison where she remained until the Vietnamese seized Phnom Penh.

While Nam has not found the photograph taken of her at S-24, she has recovered the photographs taken of her family members at S-21. Although Nam held herself together very well for a few hours, when the President put the mug shot of her father up on the screen, she started sobbing uncontrollably. The President called a ten-minute recess to allow her to recover. He again put the mug shot up on the screen and asked if she could identify the person. She began to sob again. He called in the Witness and Expert Support Unit (WESU) to help her before adjourning early for the day.

Nam's powerful story was slow to emerge today and the judges will continue questioning her on Monday.

Time and the "Equality of Arms"

In addition to completing Nam's examination, two witnesses are scheduled to testify next week for two days each. While names are not released in advance due to witness protection measures, two former S-21 staff members are expected to testify. The

President announced that the current time allocation was intended for one-day witnesses and he allotted more time to the parties for the questioning of two-day witnesses as follows: 60 minutes for the prosecution, 80 minutes for all the civil parties combined, and 80 minutes for the defense.

The defense repeated the “equality of arms” objection it has raised previously. The defense believes it should get time for questioning equal to the combined time given to the prosecution and civil parties, whom it considers a super-prosecution. Thus, based on the time amounts above, the defense would be entitled to 140 minutes. While international defense counsel Francois Roux was not present today, he has warned the Chamber previously that the time imbalance may be the subject of a later appeal.